

1 STACEY FULHORST, Executive Director
2 City of San Diego Ethics Commission
3 1010 Second Avenue, Suite 1530
4 San Diego, CA 92101
5 Telephone: (619) 533-3476
6 Facsimile: (619) 533-3448

7 Petitioner

8 **BEFORE THE CITY OF SAN DIEGO**
9 **ETHICS COMMISSION**

10 In re the Matter of:) Case No.: 2006-09
11)
12 SUKUT CONSTRUCTION, INC., and MIKE) **STIPULATION, DECISION, AND**
13 ZANABONI,) **ORDER**
14 Respondents.)
15)

16 **STIPULATION**

17 **THE PARTIES STIPULATE AS FOLLOWS:**

18 1. Petitioner Stacey Fulhorst is the Executive Director of the City of San Diego Ethics
19 Commission [Ethics Commission]. The Ethics Commission is charged with a duty to administer,
20 implement, and enforce local governmental ethics laws contained in the San Diego Municipal
21 Code [SDMC] relating to, among other things, the provisions of the City's Election Campaign
22 Control Ordinance [ECCO].

23 2. Respondent Sukut Construction, Inc. [Sukut] is an organization registered with the
24 California Secretary of State as a major donor committee (Identification No. 1251975) that made
25 contributions to state and local committees of \$10,000 or more in a calendar year.

26 3. At all times mentioned herein, Respondent Mike Zanaboni [Zanaboni] was
27 employed by Sukut as the Division President.

28 4. Sukut and Zanaboni are referred to herein collectively as Respondents.

5. This Stipulation, Decision and Order [Stipulation] will be submitted for
consideration by the Ethics Commission at its next scheduled meeting, and the agreements

1 contained herein are contingent upon the approval of the Stipulation and the accompanying
2 Decision and Order by the Ethics Commission.

3 6. This Stipulation resolves all factual and legal issues raised in this matter by the
4 Ethics Commission without the necessity of holding an administrative hearing to determine the
5 Respondents' liability.

6 7. Respondents understand and knowingly and voluntarily waive any and all
7 procedural rights under the SDMC, including, but not limited to, a determination of probable
8 cause, the issuance and receipt of an administrative complaint, the right to appear personally in
9 any administrative hearing held in this matter, the right to confront and cross-examine witnesses
10 testifying at a hearing, the right to subpoena witnesses to testify at a hearing, and the right to
11 have the Ethics Commission or a hearing officer hear this matter. Respondents agree to hold the
12 City of San Diego harmless from any and all claims or damages resulting from the
13 Commission's investigation or this stipulated agreement, or any matter reasonably related
14 thereto. Respondents further agree that the terms of this Stipulation constitute compliance with
15 the provisions of SDMC section 26.0450 in that the Stipulation includes a recitation of facts, a
16 reference to each violation, and an order.

17 8. The Respondents acknowledge that this Stipulation is not binding upon any other
18 law enforcement or government agency and does not preclude the Ethics Commission from
19 referring this matter to, cooperating with, or assisting any other law enforcement or government
20 agency with regard to this or any other related matter.

21 9. The parties agree that in the event the Ethics Commission refuses to accept this
22 Stipulation, it shall become null and void. Respondents further agree that in the event the Ethics
23 Commission rejects the Stipulation and a full evidentiary hearing before the City Ethics
24 Commission becomes necessary, no member of the Ethics Commission or its staff shall be
25 disqualified because of prior consideration of this Stipulation.

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Summary of Law and Facts

10. On September 20, 2005, Respondent Zanaboni made a contribution in the amount of \$300 to the Jerry Sanders for Mayor Committee, a committee controlled by Jerry Sanders to support his candidacy for mayor in the November 8, 2005, special run-off election.

11. On September 20, 2005, Eric Mauldin, a Project Manager employed by Respondent Sukut, made a contribution in the amount of \$300 to the Jerry Sanders for Mayor Committee at the behest of Respondent Zanaboni.

12. On September 20, 2005, Ken Hoffmeyer, a Project Manager employed by Respondent Sukut, made a contribution in the amount of \$300 to the Jerry Sanders for Mayor Committee at the behest of Respondent Zanaboni.

13. On September 21, 2005, Ken Hoffmeyer submitted an Expense Report to Respondent Sukut in which he sought reimbursement for the campaign contribution he made to the Jerry Sanders for Mayor Committee. The request was approved by Respondent Zanaboni on September 24, 2005, and Respondent Sukut subsequently issued a \$300 reimbursement check to Respondent Hoffmeyer.

14. On September 24, 2005, Respondent Zanaboni submitted an Expense Report to Respondent Sukut in which he sought reimbursement for the campaign contribution he made to the Jerry Sanders for Mayor Committee. The request was approved by the President and Chief Executive Officer for Sukut Construction on October 3, 2005, and Respondent Sukut subsequently issued a \$300 reimbursement check to Respondent Zanaboni.

15. On September 27, 2005, Eric Mauldin submitted an Expense Report to Respondent Sukut in which he sought reimbursement for the campaign contribution he made to the Jerry Sanders for Mayor Committee. The request was approved by Respondent Zanaboni on September 27, 2005, and Respondent Sukut subsequently issued a \$300 reimbursement check to Respondent Mauldin.

16. Because Respondent Sukut reimbursed Respondent Zanaboni, Eric Mauldin, and Ken Hoffmeyer in full for each of their contributions to the Jerry Sanders for Mayor Committee, Respondent Sukut is the true source of those contributions.

1 17. Because Respondents made campaign contributions for the purpose of supporting a
2 candidate in a City of San Diego election, Respondents are required to comply with the
3 provisions of ECCO.

4 18. SDMC section 27.2943 prohibits any person from directly or indirectly making a
5 contribution in the name of another person. As set forth above, the Commission's investigation
6 reveals that Respondent Sukut made three contributions to the Jerry Sanders for Mayor
7 Committee in the names of Respondent Zanaboni, Eric Mauldin, and Ken Hoffmeyer.

8 19. SDMC section 27.2944 requires any person who makes a contribution on behalf of
9 another to disclose to the recipient the fact that the person is serving as an intermediary for the
10 contribution, and to provide specific information regarding the intermediary and the true source
11 of the contribution. The Commission's investigation reveals that Respondent Zanaboni failed to
12 disclose to the Jerry Sanders for Mayor Committee that he, Eric Mauldin, and Ken Hoffmeyer
13 were serving as intermediaries for Respondent Sukut when they made contributions to this
14 Committee.

15 20. SDMC section 27.2950 prohibits contributions to City candidates by anyone other
16 than an individual. As discussed above, Respondent Sukut is a non-individual that made three
17 contributions to the Jerry Sanders for Mayor Committee by reimbursing Respondent Zanaboni,
18 Eric Mauldin, and Ken Hoffmeyer for their respective contributions.

19 21. SDMC section 27.2935 limits contributions to City candidates to \$300 per election.
20 As discussed above, Respondent Sukut reimbursed Respondent Zanaboni, Eric Mauldin, and
21 Ken Hoffmeyer for their contributions in the amounts of \$300 each, and consequently made
22 contributions to the Jerry Sanders for Mayor Committee totaling \$900.

23 Counts

24 **Counts 1 through 3 – Violations of SDMC section 27.2943**

25 22. Respondent Sukut made three contributions to the Jerry Sanders for Mayor
26 Committee in the names of Respondent Zanaboni, Eric Mauldin, and Ken Hoffmeyer, in
27 violation of the prohibition on making contributions in the name of another person as set forth in
28 SDMC section 27.2943.

Counts 4 through 6 - Violations of SDMC section 27.2944

23. Respondent Zanaboni failed to disclose to the Jerry Sanders for Mayor Committee that he, Eric Mauldin, and Ken Hoffmeyer were serving as intermediaries for Respondent Sukut when they made contributions to this Committee, as required by SDMC section 27.2944.

Counts 7 through 9 – Violations of SDMC section 27.2950

24. Respondent Sukut made three contributions to the Jerry Sanders for Mayor Committee by reimbursing Respondent Zanaboni, Eric Mauldin, and Ken Hoffmeyer for their respective contributions. These contributions by Respondent Sukut constitute contributions by an organization to a City candidate in violation of SDMC section 27.2950.

Count 10 – Violation of SDMC section 27.2935

25. Respondent Sukut reimbursed Respondent Zanaboni, Eric Mauldin, and Ken Hoffmeyer for their contributions in the amounts of \$300 each, and consequently made contributions to the Jerry Sanders for Mayor Committee totaling \$900, in violation of the \$300 contribution limit set forth in SDMC section 27.2935.

Factors in Mitigation

26. Respondents and their agents have cooperated with the Ethics Commission investigation. In particular, the Chief Financial Officer for Respondent Sukut was very forthcoming in providing information and documentation reflecting the reimbursement of campaign contributions by Respondent Sukut.

27. Although Respondent Zanaboni was aware that ECCO prohibits contributions from organizations and that Respondent Sukut could not therefore contribute directly to the Jerry Sanders for Mayor Committee, he was not aware that Respondent Sukut could not reimburse employees for their respective contributions. In fact, Respondent Sukut publicly disclosed that it made a \$900 contribution to the Sanders campaign on a campaign statement that was filed with the Secretary of State and the San Diego City Clerk.

Factors in Aggravation

28. Respondent Zanaboni asked Mauldin and Hoffmeyer to make contributions with the understanding that they would all three be reimbursed by Respondent Sukut. These actions

1 circumvented the City's ban on contributions from organizations and the City's contribution
2 limits.

3 29. Respondent Zanaboni, Mauldin, and Hoffmeyer each completed a contribution
4 remittance form which properly included the following notification required by SDMC section
5 27.2945: "It is unlawful for a contributor to be reimbursed by any organization, business, or
6 similar entity for a contribution supporting or opposing a City candidate." It should be noted,
7 however, that the remittance forms were received via facsimile and the notification was difficult
8 to decipher.

9 **Conclusion**

10 30. Respondents agree to pay a fine in the amount of \$5,000 for violating SDMC
11 sections 27.2935, 27.2943, 27.2944, and 27.2950. This amount must be paid no later than June
12 23, 2006. The submitted payment will be held pending Commission approval of this Stipulation
13 and execution of the Decision and Order set forth below.

14 DATED: _____

15 _____
16 STACEY FULHORST, Executive Director
ETHICS COMMISSION, Petitioner

17 DATED: _____

18 _____
19 MICHAEL CRAWFORD, President and Chief Executive
20 Officer of SUKUT CONSTRUCTION, INC., Respondent

21 DATED: _____

22 _____
23 MIKE ZANABONI, Respondent

24 **DECISION AND ORDER**

25 The Ethics Commission considered the above Stipulation at its meeting on _____,
26 2006. The Ethics Commission hereby approves the Stipulation and orders that, in accordance
27 with the Stipulation, Respondents pay a fine in the amount of \$5,000.

28 DATED: _____

Dorothy Leonard, Chair
SAN DIEGO ETHICS COMMISSION